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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

THOMAS KUCIEMBA, R.C.P.
6421 Harvard Circle
Huntington Beach, CA 92647

Respiratory Care Practitioner License No. 16348
Respondent.

Case No. 1H-2008-148

OAH No.

A C C U S A T I O N

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about September 10, 1993, the Respiratory Care Board issued Respiratory Care Practitioner License Number 16348 to THOMAS KUCIEMBA, R.C.P. (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2009, unless renewed.

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4. Section 3710 of the Code states in pertinent part:

“The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“(j) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a respiratory care practitioner.

1 "(a) Obtained or possessed in violation of law, or except as directed by a licensed
2 physician and surgeon, dentist, or podiatrist administered to himself or herself, or
3 furnished or administered to another, any controlled substances as defined in Division 10
4 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug
5 as defined in Article 2 (commencing with section 4015) of Chapter 9 of this code.

6 "..."

7 8. Section 3755 of the Code states:

8 "The board may take action against any respiratory care practitioner who is
9 charged with unprofessional conduct in administering, or attempting to administer, direct or
10 indirect respiratory care. Unprofessional conduct includes, but is not limited to, repeated acts of
11 clearly administering directly or indirectly inappropriate or unsafe respiratory care procedures,
12 protocols, therapeutic regimens, or diagnostic testing or monitoring techniques, and violation of
13 any provision of Section 3750. The board may determine unprofessional conduct involving any
14 and all aspects of respiratory care performed by anyone licensed as a respiratory care
15 practitioner."

16 9. California Code of Regulations (CCR), title 16, section 1399.370, states:

17 "For the purposes of denial, suspension, or revocation of a license, a crime or act
18 shall be considered to be substantially related to the qualifications, functions or duties of a
19 respiratory care practitioner, if it evidences present or potential unfitness of a licensee to perform
20 the functions authorized by his or her license or in a manner inconsistent with the public health,
21 safety, or welfare. Such crimes or acts shall include but not be limited to those involving the
22 following:

23 "(a) Violating or attempting to violate, directly or indirectly, or assisting or
24 abetting the violation of or conspiring to violate any provision or term of the Act.

25 "..."

26 10. Section 3753.5, subdivision (a) of the Code states:

27 "In any order issued in resolution of a disciplinary proceeding before the board,
28 the board or the administrative law judge may direct any practitioner or applicant found to have

1 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
2 investigation and prosecution of the case. A certified copy of the actual costs, or a good faith
3 estimate of costs where actual costs are not available, signed by the official custodian of the
4 record or his or her designated representative shall be prima facie evidence of the actual costs of
5 the investigation and prosecution of the case.”

6 11. Section 3753.7 of the Code provides that for purposes of the Respiratory
7 Care Practice Act, costs of prosecution shall include attorney general or other prosecuting
8 attorney fees, expert witness fees, and other administrative, filing, and service fees.

9 12. Section 3753.1 of the Code states:

10 "(a) An administrative disciplinary decision imposing terms of probation may
11 include, among other things, a requirement that the licensee-probationer pay the monetary
12 costs associated with monitoring the probation.

13 **FIRST CAUSE FOR DISCIPLINE**

14 (Fraudulent, Dishonest or Corrupt Act or Acts)

15 13. Respondent’s Respiratory Care Practitioner license No. 16348 is subject to
16 disciplinary action under section 3750, subdivisions (g) and (j) of the Code, and CCR, title 16,
17 section 1399.370, subdivision (a), in that he committed a fraudulent, dishonest or corrupt act or
18 acts which is/are substantially related to the qualifications, functions, or duties of a respiratory
19 care practitioner. The circumstances are as follows:

20 A. On or about February 28, 2008, Respondent worked as a respiratory
21 therapist in the Emergency Room (ER) at F.V. Regional Hospital. As a respiratory
22 therapist, Respondent only had access to the Pyxis MedStation System’s (PMSS)¹
23 respiratory cabinet located to the right of the PMSS. Respondent did not have permission
24 to access the controlled substance located underneath the PMSS drawers. At
25 approximately 09:40 a.m., Respondent was observed by F.V. Regional Hospital staff

27 1. Automated medication dispensing system.
28

1 removing medications from the Emergency Room and placed them into his scrub shirt
2 pocket.

3 B. At approximately 09:39 on or about February 28, 2008, Registered Nurse
4 L.N. removed medication from the PMSS for a patient. He closed the drawer after
5 removing the medication, however, he forgot to log off from the PMSS. After he
6 removed the medication for the patient, Registered Nurse L.N. answered a telephone call
7 near the PMSS.

8 C. Registered Nurse L.K. was near the Pyxis MedStation System located
9 inside the ER behind the nurses station. She saw Respondent open a drawer directly
10 below the PMSS and removed pills and placed them in his hand. Then she saw him place
11 the pills inside his shirt pocket. She did not confront Respondent but reported it to her
12 supervisor, K.B.

13 D. K.B. immediately walked to the PMSS. From approximately ten feet, she
14 saw Respondent remove pills from a drawer underneath the PMSS and place them in his
15 hands. She did not see Respondent place the pills in his pocket, however, she knew that
16 Respondent was not authorized to access the drawers underneath the PMSS.

17 E. Registered Nurse A.B. was seated in a chair located about ten feet west of
18 the PMSS. She heard K.B tell her "he's taking it right now." She stood up and looked in
19 the direction of the PMSS. She saw Respondent remove pills from a drawer underneath
20 the PMSS and close the drawer. She saw Respondent place the pills in his shirt pocket.
21 Registered Nurse A.B. called acting ER director R.B. and informed her that they had
22 caught Respondent stealing medication, after which she called F.V. Police Department
23 and reported the incident.

24 F. Pharmacist N.P. was standing to the right of the PMSS. She saw
25 Respondent use the PMSS. She knew he only had access to the respiratory therapist
26 cabinet not the drawers underneath the PMSS. She saw Respondent remove pills from a
27 small compartment underneath the PMSS and place it in his shirt pocket. She
28 immediately signaled K.B. without alerting Respondent.

1 G. Officer H.H. and Officer R arrived at the hospital to question Respondent
2 who was in the break room. Respondent initially did not want to speak to Officer R.,
3 consequently, Officer H.H. was called to assist in patting down Respondent. Officer R.
4 searched the contents of Respondent's fanny pack but found no medications. After
5 Officer H.H. spoke to Pharmacist P.H., he returned to the break room and asked
6 Respondent to empty out his pockets which he did.

7 H. Respondent emptied several individually wrapped white pills. As he
8 removed the pills from his pocket, Respondent stated, "This is what they are looking
9 for." A total of twelve (12) pills were placed on the table. Six (6) pills were labeled
10 "Hydrocodone Bitartrate and Acetaminophen and tablet USD 5mgs/500mgs" and the
11 other six (6) pills were labeled "Hydrocodone Bitartrate and Acetaminophen and tablet
12 USD 7.5mgs/500mgs."²

13 I. When he was asked where he got the pills, Respondent initially told the
14 police officers that he did not want to talk. Later Respondent told the police officers that
15 he found the pills but he could not say where he found them. Later Respondent changed
16 his story and told Officer H.H. that the medication found in his pocket was prescribed to
17 him. Officer H.H. took one of each type of pill and showed them to Pharmacist N.P. who
18 confirmed the pills were the ones missing from the PMSS.

19 J. The PMSS Activity Report for February 28, 2008 was reviewed. The
20 report showed that there were two transactions at 09:40 a.m. by Registered Nurse L.N..
21 Three (3) "Vicodin Plain 5mg/500mg" were removed for patient G.G. and another three
22 (3) "Vicodin Plain 5mg/500mg" were removed for patient J.G.. At 09:42 a.m. the activity
23 report showed Registered Nurse L.N. removed three (3) "Lortab 7.5/500" for patient A.L.
24 and another three (3) "Lortab 7.5/500" for patient A.A.. Registered Nurse L.N. did not
25 remove or prescribe these medications for the patients.

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27
28 2. Also known as Vicodin and Lortab.

1 K. Respondent was arrested for violation of Penal Code section 488, petty
2 theft, and Health & Safety Code section 11350, possession of controlled substance.
3 Respondent was transported to the Orange County Jail for booking.

4 L. On or about April 13, 2008, in statement to the Board, Respondent
5 admitted that he took the medication on February 28, 2008 using Registered Nurse L.N.'s
6 PMSS account.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Obtaining or Possessing Controlled Substance)

9 14. Respondent is further subject to disciplinary action under section 3750.5,
10 subdivision (a) of the Code, and CCR, title 16, section 1399.370, subdivision (a), in that he
11 obtained or possessed controlled substances, to wit: Vicodin and Lortab, in violation of the law
12 as more particularly described in paragraph 13, above, which is incorporated by reference as if
13 fully set forth herein.

14 **THIRD CAUSE FOR DISCIPLINE**

15 (Violation of the Respiratory Care Act)

16 15. Respondent is further subject to disciplinary action under section 3755, as
17 defined by section 3750, subdivisions (g) and (j) of the Code, in that he engaged in
18 unprofessional conduct in violation of the Respiratory Care Practice Act as more particularly
19 described in paragraphs 13 and 14, above, which are incorporated by reference as if fully set forth
20 herein.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

4 1. Revoking or suspending Respiratory Care Practitioner License Number
5 16348, heretofore issued to THOMAS KUCIEMBA, R.C.P.;

6 2. Ordering Thomas Kuciemba, R.C.P. to pay the Respiratory Care Board the
7 costs of the investigation and enforcement of this case, and if placed on probation, the costs of
8 probation monitoring;

9 3. Taking such other and further action as deemed necessary and proper.

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11 DATED: August 14, 2008

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14 Original signed by Liane Zimmerman for:
15 STEPHANIE NUNEZ
16 Executive Officer
17 Respiratory Care Board of California
18 Department of Consumer Affairs
19 State of California
20 Complainant

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